

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 16-00036-WES
	:	
DEVIN MELLO	:	

**REPORT AND RECOMMENDATION**

Lincoln D. Almond, United States Magistrate Judge

This matter has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) and 18 U.S.C. § 3401(i) for proposed findings of fact concerning whether Defendant is in violation of the terms of his supervised release and, if so, to recommend a disposition of this matter. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, a revocation hearing was held on November 3, 2021, at which time Defendant, through counsel and personally, admitted he was in violation of his supervised release conditions. At that hearing, I ordered Defendant detained pending final sentencing before District Judge William E. Smith.

Based upon the following analysis and the admission of Defendant, I recommend that Defendant be sentenced to time-served at the time of final sentencing followed by thirty-six months of supervised release with the first two months of supervised release to be served at the Houston House followed by three months on home detention with RF electronic monitoring.

**Background**

On January 15, 2019, the Probation Office petitioned the Court for the issuance of an arrest warrant. On January 16, 2021, the District Court reviewed the request and ordered the issuance of an arrest warrant. On November 3, 2021, Defendant was brought before the Court for a revocation hearing at which time he admitted to the following charges:

**Violation No. 1. Special Condition: Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office. Defendant shall contribute to the costs of such treatment based on ability to pay as determined by the Probation Office.**

On December 5, 2018 and December 12, 2018, Defendant failed to attend scheduled treatment appointments at Fellowship Health Resources.

**Violation No. 2. Special Condition: Defendant shall participate in a program of substance abuse testing (up to seventy-two tests per year) as directed and approved by Probation Office. Defendant shall contribute to the costs of such treatment based on ability to pay as determined by the Probation Office.**

On December 3, 2018; December 6, 2018 and December 10, 2018, Defendant failed to report to the Probation Office for drug testing in accordance with the HOPE Court requirements.

**Violation No. 3. Special Condition: Defendant shall reside in a residential reentry center preferably at the Houston House in Pawtucket, Rhode Island for six months. While at said facility, Defendant shall comply with all the policies, procedures, and regulations therein.**

On December 1, 2018, Defendant absconded from the Houston House. His whereabouts remain unknown at this time.

**Violation No. 4. Mandatory Condition: While on supervision, Defendant shall not commit another federal, state, or local crime.**

On February 11, 2019, Defendant committed the offense of Possession of a Class B Drug (Oxycodone) as evidenced by his arrest on that date in Fall River, Massachusetts by members of the Violent Fugitive Apprehension Section.

As Defendant has admitted these charges, I find he is in violation of the terms and conditions of his supervised release.

### **Recommended Disposition**

Title 18 U.S.C. § 3583(e)(2) provides that if the Court finds that Defendant violated a condition of supervised release, the court may extend the term of supervised release if less than the maximum term was previously imposed. The maximum term of supervised release was previously imposed therefore, the term cannot be extended.

Title 18 U.S.C. § 3583(e)(3) provides that the Court may revoke a term of supervised release and require the Defendant to serve in prison all or part of the term of supervised release authorized by

statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, if the Court finds by a preponderance of evidence that the defendant has violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be sentenced to a term beyond 5 years if the instant offense was a Class A felony, 3 years for a Class B felony, 2 years for a Class C or D felony, or 1 year for a Class E felony or a misdemeanor. Defendant was on supervision for a Class C felony. Therefore, he may not be required to serve more than two years' imprisonment upon revocation.

Section 7B1.1 provides for three grades of violations (A, B, and C). Subsection (b) states that where there is more than one violation, or the violation includes more than one offense, the grade of violation is determined by the violation having the most serious grade.

Section 7B1.1(a) provides that a Grade A violation constitutes conduct which is punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device, or (B) any other offense punishable by a term of imprisonment exceeding twenty years. Grade B violations are conduct constituting any other offense punishable by a term of imprisonment exceeding one year. Grade C violations are conduct constituting an offense punishable by a term of imprisonment of one year or less; or (B) a violation of any other condition of supervision.

Section 7B1.3(a)(1) states that upon finding of a Grade A or B violation, the Court shall revoke supervision. Subsection (a)(2) states that upon finding of a Grade C violation, the Court may revoke, extend, or modify the conditions of supervision. Defendant has committed Grade C violations, and the statutory maximum term of supervised release has already been imposed. Therefore, the Court may not extend supervision, but may revoke or modify supervision.

Pursuant to § 7B1.3(d), any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served

in addition to the sanction determined under § 7B1.4 (Term of Imprisonment), and any such unserved period of confinement or detention may be converted to an equivalent period of imprisonment. There are fifty-five days outstanding at the Houston House.

Section 7B1.4(a) provides that the Criminal History Category is the category applicable at the time the Defendant was originally sentenced. Defendant had a Criminal History Category of III at the time of sentencing.

Should the Court revoke supervised release, the Revocation Table provided for in § 7B1.4(a) provides the applicable imprisonment range. Defendant committed Grade C violations and has a Criminal History Category of III. Therefore, the applicable range of imprisonment for this violation is five to eleven months.

Should the Court find that Defendant has committed a Grade B or C violation, § 7B1.3(c)(1) states that where the minimum term of imprisonment determined under § 7B1.4 is at least one month, but not more than six months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e) for any portion of the minimum term. Should the Court find that the defendant has committed a Grade B or C violation, § 7B1.3(c)(2) states that where the minimum term of imprisonment determined under § 7B1.4 is more than six months but not more than ten months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment. The first provision which allows for alternatives for any portion of the minimum term applies to this matter.

Title 18 U.S.C. § 3583(h) and § 7B1.3(g)(2) provide that when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized, the Court may include a requirement that the defendant be placed on

a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. The authorized statutory maximum term of supervised release is three years. There has not been any term of imprisonment previously imposed for violations of supervised release. Therefore, the Court may impose the above-noted statutory maximum, minus the term of imprisonment that is to be imposed for this revocation.

Section 7B1.5(b) provides that, upon revocation of supervised release, no credit shall be given toward any term of imprisonment ordered, for time previously served on post-release supervision.

### **Analysis and Recommendation**

Defendant first came before this Court in 2016 as a twenty-six-year-old with a long and serious criminal history. He had a very traumatic and damaging childhood which is outlined in his presentence investigation report. He pled guilty in this Court to drug distribution and firearm possession charges in 2017. He received a significantly below-guideline sentence of time-served with the condition that he spend six months at the Houston House and then another six months on home detention. He entered the HOPE Court program while at the Houston House and made some positive strides at rehabilitation. Unfortunately, he made the impulsive decision in early December 2018 to abscond from the Houston House and disconnect from Probation. He was arrested for possessing oxycodone pills in early 2019, and the State of Rhode Island revoked his parole on a prior felony conviction. He was sentenced to four years as a parole violator but ultimately served approximately thirty-two months of that sentence before flattening and coming to this Court on these pending supervised release violation charges.

Defendant has accepted responsibility for his actions and has admitted to Grade C violations. The guideline range is five to eleven months. The Government reasonably argues for a low-end sentence of five months followed by further supervised release. Defendant seeks alternatives to additional incarceration in view of Defendant's lengthy period of state incarceration. On balance, I

find that further incarceration at this point would not be productive and recommend alternatives to the five-month guideline sentence. I recommend that Defendant serve the five months by completing the remaining two months of time at the Houston House imposed at his original sentencing in this matter as well as complete an additional period of ninety days thereafter on home detention with RF electronic monitoring.

### **Conclusion**

After considering the various factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant be sentenced to time-served at the time of final sentencing followed by thirty-six months of supervised release with the first two months of supervised release to be served at the Houston House followed by three months on home detention with RF electronic monitoring and with the following special conditions:

1. Defendant shall spend the first two months of supervised release at the Houston House. While at the Houston House, Defendant shall comply with all the policies, procedures, and regulations therein.
2. After completing his two months at the Houston House, Defendant shall thereafter spend three months of supervised release on home detention with RF electronic monitoring. Exceptions to home detention are employment, education, religious services, medical treatment, substance abuse or mental health treatment, attorney visits, court appearances, court-ordered obligations, or other activities as pre-approved by the Probation Officer.
3. Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient), as directed and approved by the Probation Office. Defendant shall participate in a program of substance abuse testing (up to seventy-two drug tests per year) as directed and approved by the Probation Officer.

4. Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office. Defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the Probation Officer.

5. Defendant shall participate in a manualized behavioral program as directed by the Probation Office. Such program may include group sessions led by a counselor or participation in a program administered by the Probation Office. Defendant shall pay for the cost of treatment, to the extent he is able, as determined by the Probation Officer.

6. Defendant shall permit the Probation Officer, who may be accompanied by either local, state, or federal law enforcement authorities, upon reasonable suspicion of a violation of supervision, by possessing weapons, to conduct a search of Defendant's residence, automobile, and any other property under Defendant's control or ownership.

7. The Court makes the judicial recommendation that Defendant consider participation in the HOPE Court program.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. LR Cr 57.2; Fed. R. Crim. P. 59. Failure to file specific objections in a timely manner constitutes a waiver of the right to review by the District Court and the right to appeal the District Court's Decision. United States v. Valencia-Copete, 792 F.2d 4 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1<sup>st</sup> Cir. 1980).

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
November 4, 2021